

ESTTA Tracking number: **ESTTA183909**

Filing date: **12/31/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	FCC, LLC
Granted to Date of previous extension	12/30/2007
Address	515 N. Flagler DriveSuite 700 West Palm Beach, FL 33401 UNITED STATES
Attorney information	G. Todd Whitcomb Smith, Gambrell & Russell, LLP 50 N. Laura StreetSuite 2600 Jacksonville, FL 32202 UNITED STATES gtwhitcomb@sgrlaw.com Phone:904-598-6113

Applicant Information

Application No	77068086	Publication date	07/03/2007
Opposition Filing Date	12/31/2007	Opposition Period Ends	12/30/2007
Applicant	FBD CAPITAL MARKETS GROUP INCORPORATED 1608 Walnut Street Philadelphia, PA 19103 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and services in the class are opposed, namely: Banking
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1966916	Application Date	05/16/1995
Registration Date	04/09/1996	Foreign Priority Date	NONE
Word Mark	FIRST CAPITAL		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 036. First use: First Use: 1987/12/00 First Use In Commerce: 1988/01/00 commercial financial services, namely business loans

U.S. Registration No.	2991709	Application Date	10/15/2003
Registration Date	09/06/2005	Foreign Priority Date	NONE
Word Mark	FIRST CAPITAL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1987/12/00 First Use In Commerce: 1988/01/00 Banking and related financial services		

Attachments	Notice of Opposition.PDF (4 pages)(100467 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/G. Todd Whitcomb/
Name	G. Todd Whitcomb
Date	12/31/2007

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

FCC, LLC)	
)	
Petitioner,)	
)	Opposition No. _____
v.)	
)	App. No. 77/068086
FBD Capital Markets Group Incorporated)	
)	
Registrant.)	
)	
Our Ref. No. 056434.526OPP)	

P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

FCC, LLC (hereinafter "Opposer") is or will be damaged by the registration of the mark



**FIRST
CAPITAL
EXCHANGE**, which is set forth in application Ser. No. 77/068086 and owned by FBD

Capital Markets Group Incorporated (hereinafter "Applicant"), and hereby opposes the same.

As grounds for the opposition, Opposer, by its attorneys, avers as follows:

1. Opposer is a limited liability company duly organized and existing under the laws of the State of Florida, with an office at 515 N. Flagler Drive, Suite 700, West Palm Beach, Florida 33401

2. Opposer is a provider of financing products and services for business across the United States. Opposer's financial services for businesses include, but are not limited to, factoring, asset-based lending, discount factoring, hedge fund financing, financial services for

acquisitions, leveraged buy-outs, and management buy-outs, accounts receivable servicing, and insolvency advisory and workout asset servicing.

3. Petitioner is the owner of all right, title and interest in and to United States Service Mark Registration No. 1,966,916, registered April 9, 1996, on the Principal Register in the United States Patent and Trademark Office, for the service mark FIRST CAPITAL for “commercial financial services, namely business loans.”

4. Petitioner has adopted and, for many years, since at least as early as January 1988, has used, continuously and substantially exclusively, the service mark FIRST CAPITAL in interstate commerce and in commerce regulated by Congress, in connection with commercial financial services, namely, business loans.

5. Petitioner’s United States Trademark Registration No. 1,966,916 is valid and incontestable.

6. Petitioner is also the owner of all right, title and interest in and to United States Service Mark Registration No. 2,991,709, registered September 6, 2005, on the Principal Register in the United States Patent and Trademark Office, for the service mark FIRST CAPITAL for “banking and related financial services.”

7. Petitioner has adopted and, for many years, since at least as early as December 1988, has used, continuously and substantially exclusively, the service mark FIRST CAPITAL in interstate commerce and in commerce regulated by Congress, in connection with banking and related financial services.

8. Since at least as early as 1988, Petitioner has incurred significant advertising expenses. Petitioner has spent well in excess of one million dollars to advertise and promote Petitioner’s services under the FIRST CAPITAL service mark (the “Mark”) in the United States.

As a result of such advertising and promotion, the Mark has become well known and widely accepted by the consuming public and in the trade. The Mark has become distinctive of the services emanating only from Petitioner, and symbolizes extremely valuable goodwill, all as evidenced by hundreds of millions of dollars in revenues of Petitioner's financial services under the Mark.

9. On December 20, 2006 Applicant submitted application Ser. No. 77/068086 for

the service mark  FIRST
CAPITAL
EXCHANGE for "banking."

10. On July 3, 2007, application Ser. No. 77/068086 was published for opposition.

11. Opposer's Mark was first used in commerce prior to any actual use or constructive use of the service mark set forth in application Ser. No. 77/068086.

12. The service mark set forth in application Ser. No. 77/068086 is confusingly similar to Opposer's Mark.

13. The services provided by Opposer under the Opposer's Mark are substantially similar to, and overlap with the services set forth in application Ser. No. 77/068086.

14. The services provided by Opposer under the Opposer's Mark and the services set forth in application Ser. No. 77/068086 are closely related.

15. The conditions surrounding the marketing of the services provided by Opposer under the Opposer's Mark and the services set forth in application Ser. No. 77/068086 are such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the services come from a common source.

16. Opposer spends substantial sums of money annually to advertise and promote the Opposer's Mark, and associated products and services through various media, including but not limited to the Internet, magazines and other media.

17. Opposer will be damaged by the issuance of this registration. Specifically, the mark set forth in application Ser. No. 77/068086 consists of or comprises a mark which so resembles Opposer's Marks as to be likely to cause confusion, or to cause mistake, or to deceive in contravention of Trademark Act Section 2(d), 15 U.S.C. § 1052(d).

18. Registration of the mark set forth in application Ser. No. 77/068086 should be refused pursuant to 15 U.S.C. § 1052(a), on the grounds that any use by Applicant of the mark set forth in application Ser. No. 78/685202 will falsely suggest a connection between Applicant and Opposer named herein, to the damage of Opposer.

WHEREFORE, Opposer requests that application Ser. No. 77/068086 be refused registration.

The required filing fee is submitted herewith. In the event the fee is either inadvertently omitted or otherwise insufficient, please charge the cost to Deposit Account No. 02-4300, 056434.526OPP.

Respectfully submitted,

FCC, LLC

By: /s/ G. Todd Whitcomb
G. Todd Whitcomb
Katharine F. Rowe

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